

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Hopkins**

A Bill

SENATE BILL 554

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 17, CHAPTER 34
9 CONCERNING PROFESSIONAL FUND RAISERS AND SOLICITORS; AN
10 ACT TO AMEND ARKANSAS CODE TITLE 4, CHAPTER 28, SUBCHAPTER
11 4 CONCERNING SOLICITATION OF CONTRIBUTIONS; TO AMEND
12 ARKANSAS CODE TITLE 4, CHAPTER 88 CONCERNING DECEPTIVE
13 TRADE PRACTICES; AND FOR OTHER PURPOSES."

14
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16
17 *SECTION 1. Arkansas Code Title 17, Chapter 34 is amended to read as*
18 *follows:*

19 *"CHAPTER 34 - PROFESSIONAL FUND RAISERS AND SOLICITORS*

20 *17-34-101. Definitions.*

21 *As used in this chapter, unless the context otherwise requires:*

22 *(1) 'Charitable' organization means any benevolent, philanthropic,*
23 *patriotic, civic, or eleemosynary person;*

24 *(2) 'Professional fund raiser' means any person who, for compensation*
25 *or any other consideration, plans, conducts, or manages in this state the*
26 *solicitation of contributions for or on behalf of any charitable organization*
27 *or any other person, or any person who engages in the business of, or holds*
28 *himself out to persons in this state as independently engaged in the business*
29 *of soliciting contributions for such purpose, but shall not include a bona*
30 *fide officer or employee of a charitable organization;*

31 *(3) 'Professional solicitor' means any person who is employed or*
32 *retained for compensation by a professional fund raiser to solicit*
33 *contributions in this state for charitable purposes;*

34 *(4) 'Person' means any individual, organization, group, association,*
35 *partnership, corporation, or any combination of them;*

1 (5) 'Promotion' means, for each charitable organization represented,
2 each and every fundraising drive or campaign for which contributions are
3 solicited. Similar or identical promotions on behalf of different charitable
4 organizations constitute separate and distinct promotions;

5 (6) 'Solicitation' means each request for a contribution.
6

7 17-34-102. Exemptions.

8 This chapter shall not apply to any solicitation made by or on behalf of
9 any church, missionary, or religious organization, or to any solicitation
10 directed to persons outside this state, excepting the provisions of §17-34-
11 103(b).
12

13 17-34-103. Penalties - Injunction.

14 (a) Any professional fund raiser violating a provision of this chapter
15 shall be guilty of a Class A misdemeanor.

16 (b) In connection with any promotion, any person employing any device,
17 scheme, or artifice to defraud or obtaining money or property by means of any
18 false pretense, misrepresentation, or promise which the actor does not intend
19 to perform shall be guilty of a Class D felony for each promotion.

20 (c) Upon complaint of any person or other information coming to the
21 attention of the prosecuting attorney or Attorney General, the prosecuting
22 attorney or Attorney General may institute an action in the proper court to
23 enjoin a professional fund raiser or professional solicitor from violating any
24 provision of this chapter.
25

26 17-34-104. Fund raisers - Registration and renewal.

27 (a) No person shall act as a professional fund raiser for any
28 charitable organization until he has first registered with the Attorney
29 General.

30 (b) Applications for registration shall be in writing, under oath, in
31 the form prescribed by the Attorney General, and shall be accompanied by an
32 annual fee in the sum of one hundred dollars (\$100.00).

33 (c) At the time of making application, the applicant shall file with,
34 and have approved by, the Attorney General a bond in which the applicant shall
35 be the principal in the sum of ten thousand dollars (\$10,000), with one (1) or

1 more sureties whose liability in the aggregate as sureties will at least equal
2 that sum.

3 (d) The bond shall run to the Attorney General for the use of the state
4 and to any person, including a charitable organization, who may have a cause
5 of action against the principal of the bond for any deceptive trade practice,
6 malfeasance or misfeasance of the principal or any professional solicitor
7 employed by him in the conduct of a solicitation. However, the aggregate
8 liability of the surety to the state and to all such persons, including
9 charitable organizations, shall, in no event, exceed the sum of the bond.

10 (e) Registration, when effected, shall be for a period of one (1) year
11 and may be renewed upon the filing of the bond and fee prescribed herein for
12 additional one-year periods.

13

14 17-34-105. Solicitors - Registration and renewal.

15 (a) Every professional solicitor must be employed in a principal-agent
16 relationship by a professional fund raiser registered pursuant to this
17 chapter, and shall, within seventy-two (72) hours after accepting such
18 employment, register with the Attorney General.

19 (b) Application for registration shall be in writing under oath in the
20 form prescribed by the Attorney General and shall be accompanied by a fee in
21 the sum of ten dollars (\$10.00).

22 (c) When effected, the registration shall be for a period of one (1)
23 year and may be renewed upon the payment of the fee prescribed in this section
24 for additional one-year periods.

25

26 17-34-106. Nonresident fund raisers and solicitors - Service of

27 process. (a) Every nonresident professional fund raiser and professional
28 solicitor shall file, with the Attorney General, in addition to the
29 application for registration required by 17-34-104, an irrevocable written
30 consent on behalf of himself and any nonresident charitable organization for
31 which solicitations are to be made, that in suits, proceedings, and actions
32 growing out of the violation of any provision of this chapter, or as a result
33 of any activities conducted within this state, giving rise to a cause of
34 action, service on the Attorney General, shall be as valid and binding as if
35 the service had been made on the professional fund raiser, professional

1 solicitor, or charitable organization.

2 (b) In case any process or pleading is served upon the Attorney
3 General, it shall be in triplicate. One (1) copy shall be filed in the office
4 of the Attorney General and the other copies immediately forwarded by the
5 Attorney General by registered or certified mail to the principal office or
6 place of business of the nonresident professional fund raiser, professional
7 solicitor or charitable organization.

8 (c) Any service so had on the Attorney General shall be returnable in
9 not less than thirty (30) days.

10

11 17-34-107. Documents.

12 (a) All contracts, scripts, pamphlets, handouts and other materials
13 used by professional fund raisers and solicitors shall be in writing, and true
14 and correct copies of all documents used in any promotion shall be kept on
15 file in the offices of the professional fund raiser and in the offices of the
16 charitable organization on whose behalf the promotion is conducted for a
17 period of three (3) years from the date the solicitation of contributions for
18 the promotion commences.

19 (b) The documents shall be available for inspection, examination and
20 copying by the Attorney General and other authorized agencies during usual and
21 customary business hours.

22

23 17-34-108. Disposition of fees.

24 All fees collected by the Attorney General under this chapter shall be
25 deposited in the State Treasury, and the State Treasurer shall credit them, as
26 general revenues, to the various funds in the respective amounts to each and
27 to be used for the purposes as provided in the Revenue Stabilization Law,
28 19-5-101 et seq.

29

30 17-34-109. City regulations.

31 Nothing contained in the provisions of §§4-28-401 - 4-28-408 or this
32 chapter shall prohibit any city from enacting ordinances regulating a
33 solicitation of contributions within the limits of the city, unless the
34 charitable organization or professional fund raiser subject to the provisions
35 of those sections complies with the filing, reporting, and registration

1 requirements thereof.

2

3 17-34-110. Records.

4 (a) Each contract between a charitable organization and a professional
5 fundraiser shall be in writing and shall be filed by the professional
6 fundraiser with the Attorney General at least fifteen (15) days prior to the
7 performance by the professional fundraiser of any material services pursuant
8 to such contract. The contract shall contain such information as will enable
9 the Attorney General to identify the services the professional fundraiser is
10 to provide and the manner and amount of his compensation.

11 (b) Each contract between a charitable organization and a professional
12 fundraiser shall require delivery of the gross collections of any promotion to
13 the charitable organization or its designated representatives.

14 (c) (1) Every professional fund raiser subject to the provisions of this
15 subchapter shall keep a full and true record of each promotion, including
16 names and addresses of all persons making contributions and the amounts
17 thereof, in such form as will enable the professional fund raiser accurately
18 to provide the information required by this subchapter. Such information
19 shall be maintained by the professional fundraiser for a minimum of three (3)
20 years after completion of the promotion.

21 (2) All records required hereunder, both in the hands of a professional
22 fund raiser or a charitable organization, shall be open to inspection,
23 examination and copying during usual and customary business hours by the
24 Attorney General or other authorized agencies.

25 (d) A professional fundraiser who at any time has custody of
26 contributions from a promotion shall keep such monies in an account at a bank
27 or other federally insured financial institutions. Such account shall be
28 separate and segregated from the general operating account and all personal
29 funds of the professional fundraiser.

30

31 17-34-111. Reports.

32 (a) For each promotion within sixty (60) days of the close of such
33 promotion, and on the anniversary of the commencement of a promotion lasting
34 more than one (1) year, every professional fund raiser subject to the
35 provisions of this subchapter who has solicited and received contributions in

1 excess of five hundred dollars (\$500) shall file the following information on
2 forms to be provided by the Attorney General:

3 (1) The gross amount of contributions pledged and the amount
4 collected for each promotion undertaken by the professional fund raiser;

5 (2) The amount of contributions remitted or to be remitted to
6 each charitable organization or purpose represented; and

7 (3) The aggregate amount retained by or paid to the professional
8 fund raiser, including all overhead, expenses, commissions and any other
9 amounts of whatever description."
10

11 SECTION 2. Arkansas Code Annotated Title 4, Chapter 28, Subchapter 4 is
12 amended to read as follows:

13 "SUBCHAPTER 4. - SOLICITATION OF CONTRIBUTIONS
14

15 4-28-401. Definitions.

16 As used in this subchapter, unless the context otherwise requires:

17 (1) 'Person' means an individual, organization, group, association,
18 partnership, corporation, or any combination of them;

19 (2) 'Charitable organization' means any benevolent, philanthropic,
20 patriotic, or eleemosynary person or any other person not regulated by §§17-
21 34-101 through 111, raising money on behalf of such an organization.

22 (3) 'Contribution' means the pledge or grant of any money or property
23 of any kind or value;

24 (4) 'Promotion' means, for each charitable organization represented,
25 each and every fundraising drive or campaign for which contributions are
26 solicited;

27 (5) 'Solicitation' means each request for a contribution.
28

29 4-28-402. Penalties.

30 (a) Any person conducting a solicitation in violation of the provisions
31 of this subchapter or providing to the Attorney General false information
32 pursuant to the provisions of this subchapter shall be guilty of a Class A
33 misdemeanor.

34 (b) In connection with any promotion by a charitable organization, any
35 person employing any device, scheme, or artifice to defraud or obtaining money

1 or property by means of any false pretense, misrepresentation, or promise
2 which the actor does not intend to perform, shall be guilty of a Class D
3 felony.

4

5 4-28-403. Injunctions.

6 Upon complaint of any person, or other information coming to the
7 attention of the prosecuting attorney or Attorney General, the prosecuting
8 attorney or Attorney General may institute an action in the proper court to
9 enjoin a solicitation of contributions which would violate any provisions of
10 this chapter.

11

12 4-28-404. Prerequisite filings.

13 (a) (1) No charitable organization, in or out of state, shall solicit
14 contributions from persons in this state by any means whatsoever until the
15 charitable organization has registered, provided certain information
16 concerning the solicitation as required by this subchapter on forms to be
17 provided by the Attorney General and has filed the information with the
18 Attorney General.

19 (2) The information so filed shall be available to the general
20 public as a matter of public record, except and to the extent such records
21 would otherwise be exempt from disclosure under the Arkansas Freedom of
22 Information Act.

23 (b) The forms containing such information shall be sworn to and shall
24 include, but not be limited to:

25 (1) The identity of the charitable organization by or for whom
26 the solicitation is to be conducted;

27 (2) The address of the charitable organization;

28 (3) The purpose for each promotion for which the contributions
29 solicited are to be used;

30 (4) The individual or officer who will have custody of the
31 contributions;

32 (5) The individuals responsible for the distribution of the
33 contributions;

34 (6) The period of time during which such promotion is to be
35 conducted;

1 (7) A description of the method or methods of solicitation in
2 such detail as may from time to time be determined by the Attorney General;

3 (8) Whether the promotion is to be conducted by voluntary unpaid
4 solicitors, by paid solicitors, or both;

5 (9) If in whole or in part by paid solicitors, the name and
6 address of each professional fund-raiser supplying the solicitors, the basis
7 of payment, and the nature of the arrangement; and

8 (10) A copy of the appropriate Internal Revenue Service Tax
9 Exempt Status Form.

10

11 4-28-405. Reciprocal agreements with other states regarding required
12 information.

13 (a) The Attorney General may enter into reciprocal agreements with a
14 like authority of any other state or states for the purpose of exchanging
15 information made available to the Attorney General under this subchapter.

16 (b) Pursuant to such agreements, the Attorney General may accept
17 information filed by a charitable organization with another state in lieu of
18 the information required to be filed by a charitable organization in
19 accordance with the provisions of 4-28-404 if the information is substantially
20 similar to the information required to be filed under 4-28-404.

21

22 4-28-406. Reports.

23 (a) On or before March 31 of each year, every charitable organization
24 subject to the provisions of this subchapter which has received contributions
25 in excess of ten thousand dollars (\$10,000) during the previous calendar year
26 shall file the following information on forms to be provided by the Attorney
27 General:

28 (1) The gross amount of the contributions pledged or collected;

29 (2) The amount allocated and dedicated to the charitable purpose
30 represented for each promotion;

31 (3) The aggregate amount paid and to be paid for the expense of
32 the promotion including overhead; and

33 (4) The aggregate amount paid to and to be paid to professional
34 fund-raisers and solicitors.

35 (b) A charitable organization which maintains its books on other than a

1 calendar year basis may, upon application to the Attorney General, be
2 permitted to file its report within ninety (90) days after the close of its
3 fiscal year.

4 (c) In addition, the Attorney General may require that within ninety
5 (90) days after the close of any special period of solicitation, the
6 charitable organization conducting the solicitation shall file a special
7 report of the information specified in this section for the special period of
8 solicitation.

9

10 4-28-407. Records.

11 (a) Every charitable organization subject to the provisions of this
12 subchapter shall keep a full and true record in such form as will enable the
13 charitable organization accurately to provide the information required by this
14 subchapter.

15 (b) All records required hereunder shall be open to inspection,
16 examination and copying at all times by the Attorney General or other
17 authorized agencies.

18

19 4-28-408. Exemptions.

20 (a) This subchapter shall not apply to any promotion by the members of
21 a charitable organization where the contributions are solicited solely from
22 persons who are members thereof at the time of the promotion nor shall this
23 subchapter apply to promotions made solely for church, missionary, or
24 religious purposes.

25 (b) The following organizations shall not be subject to §4-28-404 or
26 §4-28-406, but shall keep full and accurate records in such form as will
27 enable the organization to provide to the Attorney General, upon request, the
28 information specified in §4-28-406(a) for each promotion conducted. Each such
29 organization shall submit such information as the Attorney General may require
30 to substantiate an exemption under this section:

31 (1) Any duly organized religious corporation, institution or society;

32 (2) Any parent-teacher association or educational institution, the
33 curricula of which in whole or in part are registered or approved by any state
34 or the United States either directly or by acceptance of accreditation by an
35 accrediting body;

1 (3) Any civic organization, including any local service club, veteran's
2 post, fraternal society, volunteer fire or rescue group or local civic league
3 not organized for profit;

4 (4) Any nonprofit hospital licensed by this state or in any other
5 state;

6 (5) Any governmental unit or instrumentality of any state or the United
7 States; or

8 (6) Any broadcast media owned or operated by an educational institution
9 or governmental entity, or any entity organized solely for the support of such
10 broadcast media.

11 (c) This subchapter shall not apply to any charitable organization
12 which does not intend to solicit and receive, and does not actually receive,
13 contributions in excess of ten thousand dollars (\$10,000) during a calendar
14 year if all of its functions, including its fund-raising functions, are
15 carried on by persons who are unpaid for their services, and provided that no
16 part of its assets or income inures to the benefit of or is paid to any
17 officer or member.

18

19 4-28-409. Nonresident organizations - Service of process.

20 (a) A nonresident charitable organization desiring to solicit funds
21 within the State of Arkansas shall file with the information required in
22 4-28-404 an irrevocable written consent that in suits, proceedings, and
23 actions growing out of the violation of any provision of this subchapter, or
24 as a result of any activities conducted within this state giving rise to a
25 cause of action, service on the Attorney General shall be as valid and binding
26 as if due service had been made on the said charitable organization.

27 (b) In case any process or pleadings are served upon the Attorney
28 General, they shall be in duplicate, one (1) copy of which shall be filed in
29 the office of the Attorney General, and the other immediately forwarded by the
30 Attorney General by registered or certified mail to the principal office or
31 place of business of the nonresident charitable organization. Any service so
32 had on the Attorney General shall be returnable in not less than thirty (30)
33 days.

34

35 4-28-410. City ordinances provisionally authorized.

1 *Nothing contained in the provisions of this subchapter shall prohibit*
2 *any city in the State of Arkansas from enacting ordinances regulating a*
3 *solicitation of contributions within the limits of the city, unless the*
4 *charitable organization subject to the provisions of this subchapter complies*
5 *with the filing, reporting, and registration requirements thereof."*

6
7 SECTION 3. Arkansas Code Title 4, Chapter 88 is amended to read as
8 follows:

9
10 "CHAPTER 88 - DECEPTIVE TRADE PRACTICES

11
12 4-88-101. Applicability of chapter.

13 This chapter does not apply to:

14 (1) Advertising or practices which are subject to and which comply with
15 any rule, order, or statute administered by the Federal Trade Commission;

16 (2) Broadcasters, printers, publishers, and other persons engaging in
17 the dissemination of information who do not have actual knowledge of the
18 intent, design, purpose, or deceptive nature of the advertising or practice;

19 (3) Actions or transactions permitted under laws administered by the
20 Insurance Commissioner, Arkansas Securities Commissioner, Arkansas Public
21 Service Commission, Arkansas Transportation Commission, Bank Commissioner, or
22 other regulatory body or officer acting under statutory authority of this
23 state or the United States, unless a director of these divisions specifically
24 requests the Attorney General to implement the powers of this chapter.

25
26 4-88-102. Definitions.

27 As used in this subchapter:

28 (1) 'Charitable organization' means any benevolent,
29 philanthropic, patriotic, civic, or eleemosynary person;

30 (2) 'Contribution' means the promise or grant of any money or
31 property of any kind or value;

32 (3) 'Person' means an individual, organization, group,
33 association, partnership, corporation, or any combination of them;

34 (4) 'Promotion' means, for each charitable organization
35 represented, each and every fundraising drive or campaign for which

1 contributions are solicited. Similar or identical promotions on behalf of
2 different charitable organizations constitute separate and distinct
3 promotions;

4 (5) 'Solicitation' means each request for a contribution.

5
6 4-88-103. Penalties.

7 Any person who knowingly and willfully commits an unlawful practice
8 under this chapter shall be guilty of a Class A misdemeanor.

9
10 4-88-104. Injunctions.

11 In addition to the criminal penalty imposed hereunder, the Attorney
12 General of this state shall have authority, acting through the Consumer
13 Counsel, to file a petition in a chancery court designated in §4-88-111, for
14 civil enforcement of the provisions of this chapter by seeking an injunction
15 prohibiting any person from engaging in any deceptive or unlawful practice
16 prohibited by this chapter.

17
18 4-88-105. Consumer Protection Division.

19 (a) There is created within the Office of the Attorney General a
20 Consumer Protection Division.

21 (b) The director of this division shall be known as the Consumer
22 Counsel of Arkansas and shall be appointed by the Attorney General who may
23 also appoint such assistants, investigators, and professional and clerical
24 staff as are necessary for the efficient operation of the Consumer Protection
25 Division.

26 (c) The Consumer Protection Division shall represent and protect the
27 state, its subdivisions, the legitimate business community, and the general
28 public as consumers.

29 (d) The Consumer Protection Division shall have the following
30 functions, powers, and duties:

31 (1) To serve as a central coordinating agency and clearinghouse
32 for receiving complaints of illegal, fraudulent, or deceptive practices;

33 (2) To assist, advise, and cooperate with federal, state, and
34 local agencies and officials to protect and promote the interests of the
35 consumer public;

1 (3) To conduct investigations, research, studies, and analyses of
2 matters, to issue reports, and take appropriate action affecting the interests
3 of consumers, which may include the referral of complaints to state and local
4 departments or agencies charged with enforcement of consumer laws, or to
5 private organizations and agencies; however, the division may retain
6 jurisdiction over such matters until resolved;

7 (4) To promote consumer education and to undertake activities to
8 encourage business and industry to maintain high standards of honesty, fair
9 business practices, and public responsibility in the production,
10 advertisement, and sale of consumer goods and services, encouraging and
11 supporting activities directed toward these objectives by the Better Business
12 Bureau, consumer organizations, and other associations of like nature;

13 (5) To investigate violations of laws enacted and rules and
14 regulations promulgated for the purpose of consumer protection, and to study
15 the operation of such laws, rules, and regulations and to recommend to the
16 General Assembly needed changes in law in the consumer's interest;

17 (6) To enforce the provisions of this chapter and to perform such
18 other functions as may be incidental to the powers and duties set forth in
19 this chapter.

20 (e) The expenses of the Consumer Protection Division shall be paid from
21 funds provided for that purpose by law including, without limiting the
22 generality of the foregoing, funds made available by the state or by the
23 United States, or by political subdivisions or agencies thereof.

24
25 4-88-106. Consumer Advisory Board.

26 (a) There may be a Consumer Advisory Board appointed by the Attorney
27 General.

28 (b)(1) If the Attorney General appoints such a board, it shall consist
29 of eleven (11) members serving terms of two (2) years.

30 (2) The membership of the board shall be fairly representative
31 of consumers, manufacturers, the Better Business Bureau, labor organizations,
32 retailers, agriculture, and trade and professional associations.

33 (3) Each member shall serve without pay, but may be reimbursed
34 for necessary expenses incurred while attending meetings and while in the
35 discharge of his responsibilities.

1 (c) The chairman of the board shall be elected by the members.

2 (d) The board may assist and advise the Consumer Counsel with respect
3 to:

4 (1) Policy matters relating to consumer interests;

5 (2) Improvement in the effectiveness of state consumer programs
6 and operations;

7 (3) Needed changes in law to improve consumer protection in
8 Arkansas.

9

10 4-88-107. Deceptive trade practices generally.

11 (a) Deceptive trade practices made unlawful and prohibited by this
12 chapter include, but are not limited to, the following:

13 (1) Knowingly making a false representation as to the
14 characteristics, ingredients, uses, benefits, alterations, source,
15 sponsorship, approval, or certification of goods or services, or as to whether
16 goods are original or new, or of a particular standard, quality, grade, style,
17 or model;

18 (2) Disparaging the goods, services, or business of another by
19 false or misleading representation of fact;

20 (3) Advertising goods or services with intent not to sell them as
21 advertised;

22 (4) Refusal of a retailer to deliver to the customer purchasing
23 any electronic or mechanical apparatus the record of warranty and statement of
24 service availability which the manufacturer includes in the original carton or
25 container of the product or the refusal to make available, on request,
26 information relating thereto;

27 (5) The employment of bait and switch advertising, consisting of
28 an attractive but insincere offer to sell a product or service which the
29 seller in truth does not intend or desire to sell, evidenced by refusal to
30 show or disparagement of the advertised product, requirement of tie-in sale or
31 other undisclosed conditions precedent to the purchase, demonstrating a
32 defective product, or other acts demonstrating an intent not to sell the
33 advertised product or services;

34 (6) Knowingly failing to identify flood, water, fire, or
35 accidentally damaged goods as to such damages;

1 (7) Making a false representation that contributions solicited
2 for charitable purposes shall be spent in a specific manner or for specified
3 purposes.

4 (b) The deceptive trade practices listed in this section are in
5 addition to and do not limit the types of unfair trade practices actionable at
6 common law or under other statutes of this state.

7
8 4-88-108. Concealment, suppression, or omission of material facts.
9 The act, use, or employment by any person of any deception, fraud, or
10 false pretense, or the concealment, suppression, or omission of any material
11 fact with intent that others rely upon the concealment, suppression, or
12 omission, in connection with the sale or advertisement of any goods or
13 services is declared to be an unlawful practice.

14
15 4-88-109. Pyramiding devices.

16 (a) Every person who contrives, prepares, sets up, proposes, or
17 operates any pyramiding device shall be guilty of an unlawful practice.

18 (b)(1) As used in this section, a pyramiding device shall mean any
19 scheme whereby a participant pays valuable consideration for the chance to
20 receive compensation primarily from introducing one or more additional persons
21 into participation in the scheme or for the chance to receive compensation
22 when a person introduced by the participant introduces a new participant.

23 (2) 'Compensation,' as used in this section, does not mean or
24 include payment based upon sales made to persons who are not participants in
25 the scheme and who are not purchasing in order to participate in the scheme.

26
27 4-88-110. Solicitations for charitable organizations.

28 (a) It is an unlawful practice for any person to solicit or request
29 contributions or to sell goods, tickets of admission, advertising, or any
30 other thing of value or offer to do the same when any part of the proceeds is
31 pledged to be given to a charitable organization or solicited for a charitable
32 purpose unless:

33 (1) Prior to accepting funds, the person discloses to each party
34 solicited and every purchaser prior to accepting funds, the identity of the
35 person responsible for soliciting the funds and whether any compensation is

1 received for these services; and

2 (2) Upon request by a solicited party, the person truthfully
3 discloses the percentage of funds raised which is being paid to the solicitor
4 and what percentage will be applied to the charitable purpose. (b) It is
5 an unlawful practice for any person to solicit contributions of anything of
6 value or to sell or offer to sell tickets of admission, advertising, or any
7 other tangible thing of value upon the representation, direct or by
8 implication, that any part of the funds or other items received shall be given
9 or contributed to any charitable organization when the organization has not
10 agreed or consented in writing to the use of its name prior to the promotion
11 and solicitation.

12 (c) It is an unlawful practice for any person to sell or offer to sell
13 passes or tickets of admission when a greater number of tickets will be
14 offered for sale than the capacity of the facility for the number of shows
15 contracted to be performed without disclosing, orally and in writing, prior to
16 receipt of payment for the passes or tickets, the total seating capacity, the
17 total number of seats for which tickets or passes will be sold, and the total
18 number of persons expected to attend the production or event.

19 (d) The provisions of this section shall not apply to any bona fide
20 full-time employee of the charitable organization, or to any person who donates
21 or gives all of the gross proceeds from sales or all contributions to the
22 organizations for which the funds or things of value were solicited. However,
23 this exemption shall not apply to any person who directly or indirectly
24 receives commission as compensation for services in relation to fund-raising
25 activities performed for the charitable organization.

26

27 4-88-111. Investigations - Procedure - Confidential information.

28 (a) When the Attorney General determines that an investigation should
29 be made as to whether a person has engaged in, is engaging in, or shows
30 evidence of intent to engage in any practice declared to be unlawful by this
31 chapter, when he receives a request for enforcement proceedings from a
32 consumer or labor organization, better business bureau, chamber of commerce,
33 or any state agency, or when he receives a written complaint from a consumer
34 of a practice declared to be unlawful under this chapter, he may:

35 (1) Require that person to file a statement or report in writing

1 as to the facts and circumstances concerning the matter, together with such
2 other data as may be reasonably related thereto;

3 (2) Examine under oath, or take the deposition of any person in
4 connection with the matter;

5 (3) Examine any merchandise, or sample thereof, sales tickets, or
6 other records relating thereto.

7 (b) Unless otherwise ordered by a court for good cause shown, no
8 statement or documentary material produced pursuant to a demand under this
9 section shall be produced for inspection or copying by, nor shall the contents
10 thereof be disclosed to, any person other than the authorized employee of the
11 Attorney General without the consent of the person who produced the material.

12 (c) The Attorney General or any attorney designated by him may use the
13 documentary material or copies thereof in the enforcement of this chapter by
14 presentation before any court, provided that any such material which contains
15 trade secrets shall not be presented except with the approval of the court in
16 which the action is pending after adequate notice to the person furnishing
17 such material. However, when material containing trade secrets is presented
18 with court approval, the material and the evidence pertaining thereto shall be
19 held in camera and shall not be part of the court record or trial transcript.

20

21 4-88-112. Failure to cooperate in investigations - Proceedings.

22 (a) In the event any person fails or refuses to file a statement,
23 appear, or produce records as required by §4-88-110, the Attorney General,
24 acting through the Consumer Counsel, may file, in the chancery court of the
25 county in which the person resides or transacts business or of the judicial
26 district in which the State Capitol is located, a petition for an order of
27 such court for the civil enforcement of such section.

28 (b) Upon the filing of the petition and service upon the person, the
29 court shall have jurisdiction to hear and determine the matter so presented
30 and to enter such order, including temporary injunctions, as may be required
31 to effectuate this chapter.

32 (c) Willful concealment, destruction, alteration, or falsification of
33 any documentary material which would be subject to subpoena by the court or
34 the disobedience of any order of the court is declared to be unlawful and
35 shall be punished as contempt of court.

1 (d) Any final order shall be subject to appeal to the Supreme Court of
2 Arkansas.

3

4 4-88-113. Civil enforcement and remedies - Suspension or forfeiture of
5 charter, franchise, etc.

6 (a) In any proceeding for civil enforcement of provisions of this
7 chapter, prohibiting unlawful practices as defined in this chapter, the court
8 may make such orders or judgments as may be necessary to:

9 (1) Prevent the use or employment by such person of any
10 prohibited practices; or

11 (2) Restore to any purchaser who has suffered any ascertainable
12 loss by reason of the use or employment of the prohibited practices any moneys
13 or real or personal property, which may have been acquired by means of any
14 practice declared to be unlawful by this chapter, together with other damages
15 sustained; or

16 (3) Assess penalties to be paid to the state not to exceed ten
17 thousand dollars (\$10,000) per violation against persons found to have
18 violated this chapter. Each promotion in violation of this subchapter shall
19 constitute a separate violation.

20 (b)(1) Upon petition of the Attorney General, the court may order the
21 suspension or forfeiture of franchise, corporate charter, or other licenses or
22 permits or authorization to do business in this state .

23 (2) As compensation for his services in this behalf, the Attorney
24 General shall be entitled to his expenses incurred in the investigation and
25 prosecution of suits, to be paid by the defendant when judgment is rendered
26 for the state, to be taxed as costs by the court hearing the cause.

27 (c) Any person who violates the terms of an injunction issued under
28 this chapter shall forfeit and pay to the state a civil penalty of not more
29 than ten thousand dollars (\$10,000) for any single action
30 brought by the Attorney General."

31

32 SECTION 4. All provisions of this act of a general and permanent
33 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
34 Code Revision Commission shall incorporate the same in the Code.

35

